

CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 354

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4,
STATE DIRECTOR RAYMOND FOLEY, PETITIONER

VS.

RUTH BURR, DOING BUSINESS AS SECRETARIAL
SERVICE BUREAU

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF MICHIGAN

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1939

CERTIORARI GRANTED OCTOBER 22, 1939

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. —

FEDERAL HOUSING ADMINISTRATION, REGION NO. 4,
STATE DIRECTOR RAYMOND FOLEY, PETITIONER

vs.

RUTH BURR, DOING BUSINESS AS SECRETARIAL
SERVICE BUREAUON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

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40323

In Supreme Court of Michigan

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU

PLAINTIFF

vs.

ONE HEFFNER, WHOSE FIRST NAME IS UNKNOWN, BUT WHOSE PERSON IS
WELL KNOWN, ET AL., DEFENDANTS; FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, GARNISHEE DEFENDANT AND APPELLANT

Appeal from Wayne

Plaintiff's attorneys, Seaborg and Rice. Defendants' attorneys,
John C. Lehr.

Docket entries

1938

Oct. 20—Application for leave to appeal filed.

" 22—Brief in opposition filed.

Nov. 10—Application granted.

Dec. 13—Record on appeal filed.

1939

Mar. 2—Note of argument filed.

Apr. 11—Argued and submitted.

Jun. 5—Affirmed, costs.

" 19—Record returned to Court below.

" 20—Petition for stay of proceedings filed.

" 20—Petition for stay of proceedings granted.

B

In Supreme Court of Michigan

[Title omitted.]

Order granting application for leave to appeal

Nov. 10, 1938

In this cause an application is filed by garnishee defendant for leave to appeal from the judgment of the Circuit Court for the County of Wayne, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted.

C [Title omitted.]

D In Circuit Court of Wayne County

Recital as to order allowing appeal

The order allowing this appeal was dated November 10, 1938.

E In Circuit Court of Wayne County

Calendar entries

| | | |
|------|---------------------------|----------|
| 1930 | Nov. 6—Judgment rendered: | |
| | Damages ----- | \$102.63 |
| 1932 | Jan. 13—Transcript filed: | |
| | Costs ----- | 7.00 |
| | C. C. costs ----- | 1.50 |
| | Transcript— | |
| | Fi. Fa. ----- | |
| | Total ----- | \$111.13 |

Jan. 13—Praecipe filed; Fi. Fa. issued.

Feb. 12—Fi. Fa. returned unsatisfied, filed.

1938

Mar. 4—Affidavit for return of garnishment filed.

Mar. 7—Motion for judgment against garnishee defendant filed.

Mar. 31—Answer of F. H. A. filed.

June 11—Motion for judgment against garnishee defendant filed; heard and taken under advisement; court sheet, Gilbert.

F Sept. 12—Opinion of the Court signed, filed; opinion of the Court ordered judgment for plaintiffs against garnishee defendant, signed, filed; court sheet, Judge Gilbert.

Sept. 12—Judgment entered for plaintiff and against garnishee defendant in amount of seventy-one dollars, eleven cents; plaintiff to have execution therefor; court sheet, Judge Gilbert.

Sept. 21—Order granting stay of 20 days following entry of judgment, etc., filed.

Nov. 15—Claim of appeal, notice of appeal, affidavit of service, filed, \$5.00.

Dec. 9—Record on appeal signed and certified this date; court sheet (Judge Parm C. Gilbert, by Clyde I. Webster).

Dec. 9—Record on appeal, signed, filed (Clyde I. Webster).

Dec. 10—Notice of transmission of record on appeal to the Supreme Court filed.

4 FEDERAL HOUSING ADMINISTRATION VS. RUTH BURR

2 In Circuit Court of Wayne County

Statement of reasons and grounds of appeal

Filed December 9, 1938

The appellant claims that the trial court erred in granting judgment in favor of the plaintiff and against the garnishee defendant, appellant, for the reason:

That the Federal Housing Administration is an executive branch of the United States Government, which is a sovereign body politic, and can not be sued without its consent, and is not within the jurisdiction of this court.

In Circuit Court of Wayne County

Stipulation of settled record

Filed December 9, 1938

It is hereby stipulated by and between Seaborg and Rice, attorneys for plaintiff and appellee, and John C. Lehr, United States Attorney for the Eastern District of Michigan, by Kenneth D. Wilkins, Assistant United States Attorney for said district, attorneys for garnishee defendant and appellant, that the proceedings and facts of record in said cause in the trial Court are as follows:

1. The plaintiff and appellee, Ruth Burr, doing business as Secretarial Service Bureau, obtained a final judgment against the principal defendants, one Heffner, whose first name is unknown but whose person is well known, and George Brooks, doing business as Heffner and Brooks, on the 5th day of November 1930.

2. That a writ of garnishment, having been duly issued out of the Circuit Court for the County of Wayne in said case, was served upon garnishee defendant, Federal Housing Administration, Region #4, State Director Raymond Foley, appellant herein, on March 5, 1938.

3. That said garnishee defendant caused his appearance to be entered by John C. Lehr, United States Attorney for the Eastern District of Michigan, on March 7, 1938, a copy of which appearance is annexed hereto, marked Exhibit A.

4. That an answer or disclosure was filed by appellant on March 31, 1938, a copy of which is attached hereto, marked Exhibit B.

5. That a motion for judgment in favor of the appellee and against the garnishee defendant and appellant was filed on June 11, 1938, a copy of which motion is attached hereto and marked Exhibit C.

6. That pursuant to notice and with both parties hereto being represented in Court, said motion was heard by the Honorable Parm C.

Gilbert, Circuit Judge then sitting in Wayne County, and the opinion of the Court filed on September 6, 1938, a copy of which opinion appears elsewhere in this record.

7. That judgment for the plaintiff and appellee was duly rendered and entered by the Honorable Clyde I. Webster, one of the Circuit Judges for Wayne County, a copy of which judgment appears elsewhere in this record.

8. That an order granting a stay of twenty days in which to move for new trial or appeal was granted by the Honorable Parm C. Gilbert on September 21, 1938, a copy of which order is annexed hereto and marked Exhibit D.

9. That thereafter, pursuant to motion made to the Supreme Court of Michigan, an order was granted on November 10, 1938, allowing a delayed appeal in this cause, a copy of which is attached hereto and marked Exhibit E.

10. That claim of appeal was duly served and filed by the appellant on November 15, 1938, copy of which is attached hereto, marked Exhibit F.

11. It is further stipulated and agreed that any journal or calendar entries omitted or made, which appear to conflict with the above and foregoing statement of facts and record, are erroneous and that the foregoing statement is true for the purpose of this case.

12. It is further stipulated and agreed that the time for filing the settled record has been extended from time to time as necessity required, by stipulation of counsel and order of the court, until December 16, 1938.

SEABORG & RICE,
Attorneys for Plaintiff and Appellee.

JOHN C. LEHR,
United States Attorney,

By KENNETH D. WILKINS,
Assistant U. S. Attorney,
Attorneys for Garnishee Defendant and Appellant.

CERTIFICATION

I do hereby certify that the foregoing statement of proceedings and facts fairly presents the question for review and that, on motion duly made and consented to by counsel, the time for filing the record has been extended to December 16, 1938.

PARM C. GILBERT,
Circuit Judge.

By CLYDE I. WEBSTER,
In his absence.

Dated: Detroit, Michigan, December 9, 1938.

6 *Exhibit A*

APPEARANCE

(Filed March 7, 1938)

To the CLERK OF SAID COURT:

Please enter the appearance of the undersigned as attorneys for Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant in the above-entitled cause.

JOHN C. LEHR,

United States Attorney.

By PETER P. GILBERT,

Assistant United States Attorney.

To SEABORG & RICE,

Attorneys for Plaintiff.

827 Penobscot Bldg., Detroit, Michigan.

Please take notice we have this day entered our appearance as attorneys for the Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant in the above-entitled cause.

JOHN C. LEHR,

United States Attorney.

By PETER P. GILBERT,

Assistant United States Attorney.

7 *Exhibit B*

ANSWER AND DISCLOSURE

(Filed March 31, 1938)

The Federal Housing Administration by Raymond M. Foley, State Director for the State of Michigan for answer and disclosure in the above-entitled case, says:

First, The above-named defendant, George W. Brooks, is no longer connected with the Federal Housing Administration, said George W. Brooks having died on the 8th day of March 1938.

Second, That there was true and owing to said George W. Brooks by the Federal Housing Administration at the time of his death the sum of seventy-one dollars and eleven cents (\$71.11), which said amount remains unpaid.

Third, That the Federal Housing Administration is an agency of the United States Government and is, therefore, not subject to garnishee proceedings.

FEDERAL HOUSING ADMINISTRATION.

By: RAYMOND M. FOLEY,

State Director.

Raymond M. Foley, State Director of the Federal Housing Administration, on oath says that the foregoing is a true and correct statement to the best of his knowledge and belief.

Subscribed and sworn to before me, a Notary Public in and for the State of Michigan, this 29th day of March 1938.

PATRICIA M. THOMAS.

My commission expires November 3, 1940.

Exhibit C

MOTION FOR JUDGMENT AGAINST GARNISHEE DEFENDANT

(Filed June 11, 1938)

Now comes the plaintiff, by Seaborg & Rice, her attorneys, and moves the court to enter a judgment against the garnishee defendant, Federal Housing Administration, Region #4, State Director, Raymond Foley, for the reasons set forth in the affidavit of Arthur H. Rice, hereto attached.

SEABORG & RICE,

Attorneys for Plaintiff,

827 Penobscot Building, Detroit, Michigan,

Affidavit of Arthur H. Rice

STATE OF MICHIGAN,

County of Wayne, ss:

Arthur H. Rice, being first duly sworn, deposes and says that he is associated with the firm of Seaborg & Rice, attorneys for the plaintiff in the above-entitled cause.

Deponent further says that a writ of garnishment was duly served upon the garnishee defendant in the above-entitled cause, and that a disclosure was filed by the garnishee defendant, admitting liability to the principal defendant, George W. Brooks, in the sum of seventy-one and 11/100 (\$71.11) dollars.

Deponent further says that on November 5, 1930, a judgment was rendered against the principal defendants in favor of this plaintiff in the Common Pleas Court for the City of Detroit, in the amount of one hundred nine and 63/100 (\$109.63) dollars, less payments made, leaving a balance due of seventy-seven and 13/100 (\$77.13) dollars, a transcript of which judgment was filed with the Clerk of the Circuit Court on January 13, 1932.

Wherefore plaintiff moves that a judgment be rendered against the garnishee defendant in the amount of seventy-one and 11/100 (\$71.11) Dollars.

Further deponent saith not.

ARTHUR H. RICE.

Subscribed and sworn to before me this 31st day of March A. D. 1938.

HELEN SZACHTA,

Notary Public, Wayne County, Michigan.

My commission expires Aug. 27, 1941.

Exhibit D

ORDER FOR STAY OF PROCEEDINGS

(Filed September 21, 1938)

In the above entitled cause, in accordance with the rule of Court, and on request of counsel for defendants, it is ordered that a stay of twenty days following the entry of judgment in this cause be and is hereby granted, within which a motion for new trial may be made, claim of appeal filed or such other action taken as counsel may advise.

PAUL C. GILBERT,
Circuit Judge.

Dated September 12th, 1938.

Exhibit E

ORDER GRANTING APPEAL

(Filed November 10, 1938)

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the tenth day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

Present the Honorable Howard Wiest, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, William W. Potter, Bert D. Chandler, Walter H. North, Thomas F. McAllister, Associate Justices.

In this cause an application is filed by garnishee defendant, 11 for leave to appeal from the judgment of the Circuit Court for the County of Wayne, and a brief in opposition thereto having been filed by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted.

STATE OF MICHIGAN, ss:

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 11th day of November, in the year of our Lord one thousand nine hundred and thirty-eight.

JAY MERTZ, Clerk.

Exhibit F

CLAIM OF APPEAL

(Filed November 15, 1938)

The Federal Housing Administration, Region #4, State Director Raymond Foley, Garnishee Defendant, claims an appeal from the judgment entered on September 12, 1938, by Clyde I. Webster, Circuit Judge for Wayne County, based upon the written opinion of Judge Parm C. Gilbert, sitting for the Wayne County Circuit.

12 Appellant takes an appeal in the nature of certiorari, leave to file a belated appeal having been granted by the Supreme Court on November 16, 1938.

JOHN C. LEHR,

United States Attorney,

KENNETH D. WILKINS,

*Assistant United States Attorney,**Attorneys for Garnishee Defendant and Appellant,**870 Federal Building, Detroit, Michigan.*

Dated November 13, 1938.

NOTICE OF CLAIM OF APPEAL

(Filed November 15, 1938)

SEABORG & RICE,

*827 Penobscot Building, Detroit, Michigan,**Attorneys for Plaintiff and Appellee:*

Please take notice that attached hereto is a copy of claim of appeal, this day filed with the Circuit Court for the County of Wayne. Also, you are hereby notified that the appeal fee of \$5.00 has been paid.

JOHN C. LEHR,

United States Attorney,

KENNETH D. WILKINS,

*Assistant United States Attorney,**Attorneys for Garnishee Defendant and Appellant,**870 Federal Building, Detroit, Michigan.*

Dated November 13, 1938.

13

AFFIDAVIT OF SERVICE

STATE OF MICHIGAN.

County of Wayne, ss:

Kenneth D. Wilkins, of the City of Detroit, State of Michigan, being duly sworn, deposes and says that on the 15th day of November, 1938, he did serve a copy of the claim of appeal and notice upon Sea-

borg & Rice, attorneys for the plaintiff and appellee, by leaving same at their office at 827 Penobscot Building, Detroit, Michigan, during office hours.

KENNETH D. WILKINS.

Subscribed and sworn to before me this 15th day of November, A. D. 1938.

J. THOMAS SMITH.

Notary Public, Wayne County, Michigan.

My commission expires H-28-38.

14 In Circuit Court of Wayne County

Opinion of the Court

Filed September 12, 1938

In this cause plaintiff corporation has obtained final judgment against the defendant, and garnishment was properly served upon the defendant Federal Housing Administration through its proper representatives in Wayne County, Michigan.

The Federal Housing Administration, Garnishee Defendant, filed a disclosure in response to such writ of service, setting forth an indebtedness due the Principal Defendant at the time of service of the writ in the amount of \$74.11.

Plaintiff filed motion for judgment against the Garnishee Defendant and the Garnishee Defendant resists entry of judgment, asserting that the Federal Housing Administration is entitled to immunity, which it asserts is granted to United States Government from garnishment process.

Plaintiff's contention is that the Federal Housing Administration is doing, and has been performing a commercial insurance business, and that its claim of immunity is without force.

Without reciting the statute or regulations which may possibly be in force concerning the business of Federal Housing Administration, it is sufficient to say that the nature of its business is that of an insurer of loans. That is to say, as a loan may be made by a bank or

15 other party to any person or persons desiring to build or improve residence property or expend money in any similar manner, such project is looked over and examined by the representatives of the Federal Housing Administration, and, if found acceptable, it joins with the party lending the money in approving the loan, and issues insurance—virtually underwriting the loan to a certain extent—so as to make the investment more desirable.

The Housing Administration is not connected with the several transactions where this insurance is written, other than as insurer. Its personnel and office expenses are paid from the Treasury at Washington—that is, with Government funds—and it is no doubt true that

the defendant employs such persons as are either appointed or approved by the executive department of the Government.

The Court holds that the defendant Federal Housing Administration, is subject to a writ of garnishment in this case, and that judgment should be entered against it in accordance with its disclosure.

There is nothing in the set-up or operations of the Federal Housing Administration to constitute it in any wise a part of the Federal Government. Its duties are not in any wise essential to any function of Government. If it was to cease business at this hour, no governmental effort or purpose would be modified or suffer in the least; and so long as it continues to operate it does not in any sense or in any degree perform or carry out nor aid in performing any governmental office or service.

So far as its operations are concerned, they are purely commercial, and it and its employes are conducting an insurance business pure and simple. The mere fact that it may report to some department of Government, or that its employes or personnel may be paid through the Government Treasury, does not, in the opinion of the Court, characterize the defendant Administration nor such employes or personnel as a part of the Federal Government.

Many agencies are authorized to do certain things by the Government, which agencies do not necessarily perform any Governmental function; and the same is true of the Federal Housing Administration. Judgment may be entered for the plaintiff in accordance with the motion.

PAUL C. GILBERT,
Circuit Judge.

Dated September 6, 1938.

In Circuit Court of Wayne County

Judgment

Filed September 12, 1938

At a session of the Circuit Court for the County of Wayne, held at the Court House, in the City of Detroit, on the 12th day of September 1938. Hon. Paul C. Gilbert, Circuit Judge.

In this cause, judgment having heretofore been entered in favor of the plaintiff and against the principal defendant; and the garnishee defendant having filed a disclosure herein, from which it appears that the said garnishee defendant is indebted to the principal defendant in the sum of \$71.11; and the Court being fully advised in the premises; Thereupon, upon motion of counsel for plaintiff, it is considered and adjudged that the said plaintiff do recover against the said garnishee defendant the amount of his indebtedness to the principal defendant and that plaintiff have execution therefor.

[Title omitted.]

Minute entry of argument and submission

April 11, 1939

This cause coming on to be heard is argued by Mr. Smith for the defendants and is submitted on briefs on the part of the plaintiff.

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU,
PLAINTIFF-APPELLEE

v.

ONE HEFFNER, WHOSE FIRST NAME IS UNKNOWN, BUT WHOSE PERSON IS WELL KNOWN, AND GEORGE BROOKS, DOING BUSINESS AS HEFFNER AND BROOKS, PRINCIPAL DEFENDANTS; FEDERAL HOUSING ADMINISTRATION, REGION NO. 4, STATE DIRECTOR RAYMOND FOLEY, GARNISHEE DEFENDANT AND APPELLANT

Before the entire bench.

Opinion

Filed June 5, 1939

BUSHNELL, J. This is an appeal from a judgment entered against a garnishee defendant in the sum of \$71.11. Leave to appeal was granted because of the importance of the question involved, namely, Is the Federal Housing Administration, a governmental agency, subject to being sued as garnishee defendant through its State Director? Appellant says this cannot be done in the absence of specific statutory consent.

Plaintiff held an unsatisfied judgment against one Heffner and George Brooks, doing business as Heffner and Brooks. This
20 Judgment was obtained on November 5, 1930. The writ of garnishment was served on March 5, 1938. On March 7, 1938, an appearance was entered for the garnishee defendant by the United States Attorney for the Eastern District of Michigan. The answer and disclosure filed on March 31, 1938, stated that defendant Brooks was no longer connected with the Federal Housing Administration, he having died on March 8, 1938, and that there was due and owing to him by the garnishee defendant the sum of \$71.11. No question is raised in this appeal as to whether or not the entire sum was garnishable, whether or not the money represented wages due Brooks, or the effect of his death.

The Federal Housing Administration was created by congressional enactment. See 12 U. S. C. A. § 1701 et seq. The statute provides that—

"The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal." Sec. 1702.

In the recent case of *Keifer & Keifer v. Reconstruction Finance Corporation*, 83 L. Ed. (Adv.) 512, decided February 27, 1939, the court called attention to the use of independent corporate facilities for governmental ends and said that:

"In spawning these corporations during the past two decades, Congress has uniformly included amenability to law. Congress has provided for not less than forty of such corporations discharging governmental functions, and without exception the authority to sue-and-be-sued was included."

The footnote appearing at this point in the court's opinion contains a list of those referred to, including the "Federal Housing Administrator (August 23, 1935) 49 Stat. at L. 684, 722, chap. 614, 12 U. S. C. A."

Does the phrase "sue-and-be-sued" include a writ of garnishment?

A writ of garnishment is a civil process at law, *Webster v. Bennett*, 247 Mich. 616, in the nature of an equitable attachment. *Posselius v. First Nat'l. Bank*, 264 Mich. 687. See also *Insurance Company v. Circuit Judge*, 105 Mich. 566. The usual test as to the liability of a garnishee is whether the principal defendant could have maintained an action against the garnishee to recover the property in question. *Nessen Lbr. Co. v. Bennett Lbr. Co.*, 223 Mich. 349. The word "sue" is defined in *Bouvier's Law Dictionary*, 5th ed., as meaning "to commence or to continue legal proceedings for the recovery of a right." See *Porto Rico v. Resaly y Castillo*, 227 U. S. 270, 57 L. ed. 509.

Buchanan v. Alexander, 4 How. 18, 11 L. ed. 857, holds that money in the hands of a governmental officer cannot be reached by a writ of garnishment, but the question of waiver of immunity is not considered in the *Buchanan* opinion. Although the question of garnishment was not before the court in *Keifer & Keifer v. Reconstruction Finance Corp.*, 83 L. ed. (Adv.) 512, and waiver of immunity was not expressly stated as to the *Regional Agricultural Credit Corporation* directly involved and which the *Reconstruction Finance Corporation* was authorized to create, there seems to remain little doubt from the reasoning of the opinion of the court that, if "Congress as embarked upon a general policy of consent for suits against the government sounding in tort even where there is no element of contract," it should follow that, where express consent is given in the federal act to "sue and be sued" without any limitation upon the

permissive language, this provision for suits against the administrator "in any court of competent jurisdiction, State or Federal," must have contemplated the provisions of the law in the several states, including that of Michigan, where it is settled that a writ of garnishment is a civil process.

In *Federal Land Bank v. Priddy*, 295 U. S. 229, 79 L. ed. 1408, it was held that, although the bank is a governmental instrumentality and subject to suit and judicial process only as Congress may determine, a suit begun by attachment against real estate owned by the bank would not be vacated because of governmental immunity. The statute involved in the case was section 4 of the Federal Farm Loan Act, which provides that Federal Land Banks "shall have power * * * to sue and be sued; complain, interplead, and defend, in any court of law and equity as fully as natural persons." The additional language of the Federal Farm Loan Act does not amplify the waiver of immunity. No reported cases are available with respect to writs of garnishments issued against the Federal Housing Administration, but there are cases involving garnishments against the Home Owners' Loan Corporation. One is *Home Owners' Loan Corporation v. Hardie & Caudle*, (Tenn. 1936), 100 S. W. (2) 238, 108 A. L. R. 702, in which the Supreme Court of Tennessee held that the corporation was not subject to garnishment. Another is that of *Central Market v. King* (Neb. 1937), 272 N. W. 244, in which the Supreme Court of Nebraska considered the Tennessee opinion and, nevertheless, held that the Home Owners' Loan Corporation was subject to garnishment.

The strength of the Nebraska opinion, which turned upon the question of whether or not the Reconstruction Finance Corporation was engaged in a governmental function, may be questioned in the light of the recent case of *Graves v. New York*, — U. S. —, 23 83 L. ed. (Adv.) 577. We agree with the result reached by the Nebraska court. However, we do not plant decision upon this question but rather upon the waiver of immunity expressed in the words "sue and be sued."

Appellant quotes the following from *Berger v. Schenley Distillers Corp.*, 277 Mich. 159, in support of the argument that in Michigan a state administrative agency is not subject to garnishment.

"The liquor control commission is a State administrative agency, and not a corporate entity of any nature whatsoever within the sense of the mentioned statute (3 Comp. Laws 1929, § 14885, Stat. Ann. § 27.1883) and, therefore, cannot be served and proceeded against as a garnishee."

The argument advanced is a distortion of the quoted language of the opinion, because the statute sets up the procedure to be followed where the principal defendant is a nonresident. The meaning of the quoted language is that the State Administrative Agency does

not come within the provisions of the mentioned statute, and that is all.

Appellant urges the controlling value of *McCarthy v. U. S. Shipping Board Merchant Fleet Corporation*, 53 Fed. (2) 923. That case was based on the Merchant Marine Act of 1920, 41 Stat. 988, which does not contain the broad waiver of immunity found in the Federal Housing Act.

The Authority to "sue and be sued" must necessarily include garnishment, and the judgment entered below against the Federal Housing Administration, garnishee defendant, should be affirmed. It is so ordered, with costs to appellee.

(Signed) GEORGE E. BUSHNELL.
HENRY M. BUTZEL.
HOWARD WIEST.
EDWARD M. SHARPE.
BERT D. CHANDLER.
THOMAS F. McALLISTER.
WALTER H. NORTH.
WILLIAM W. POTTER.

[File endorsement omitted.]

24

In Supreme Court of Michigan

40423

RUTH BURR, DOING BUSINESS AS SECRETARIAL SERVICE BUREAU,
PLAINTIFF

vs.

ONE HEFTNER, WHOSE FIRST NAME IS UNKNOWN, BUT WHOSE PERSON
IS WELL KNOWN, ET AL., DEFENDANTS; FEDERAL HOUSING ADMINISTRATION,
REGION NO. 4, GARNISHEE DEFENDANT AND APPELLANT

Judgment

June 5, 1939

The record and proceedings in this cause having been brought to this Court by appeal from the Circuit Court for the County of Wayne, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in giving of judgment in said Circuit Court, there is no error, Therefore it is ordered and adjudged that the judgment of said Circuit Court for the County of Wayne be and the same is hereby in all things affirmed, and that the appellee do recover of the appellant, his costs, to be taxed, and that he have execution therefor.

In Supreme Court of Michigan

[Title omitted.]

Order granting stay of proceedings

June 20, 1939

In this cause a motion is filed by the appellant for a stay of proceedings and nothing in opposition thereto, having been filed by the appellee, and due consideration thereof having been had by the Court, It is ordered that all proceedings for the enforcement of the judgment in the cause be stayed until the further order of this Court, without bond.

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed October 23, 1939

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

MICRO CARD

22

TRADE

MARK



39



1338

65



tween the attempted garnishment below and an attempt to attach salary owing to an employee of one of the regular departments of the Government, such as Commerce or Agriculture. Such a suit is against the United States and the only question is whether the United States has consented to be sued for that purpose and in that fashion. Any suit against the Administrator which is authorized by the Act is in fact brought against the United States with its consent.

The Trading With the Enemy Act, approved October 6, 1917, c. 106, 40 Stat. 411, presented a similar situation. That Act provided for the appointment of an alien property custodian (now the Attorney General) to administer its provisions with respect to seizure, custody, and management of enemy property, and in Section 12 provided that all money coming into the hands of the custodian should be deposited in the Treasury. Section 9 of the Act provided that any person claiming an interest in seized property might institute suit for recovery against "the alien property custodian or the Treasurer of the United States, as the case may be." Such suits have uniformly been held to be suits against the United States and strictly subject to the terms of the Congressional consent; *Banco Mexicano v. Deutsche Bank*, 263 U. S. 591, 602-603; *Becker Steel Co. v. Cummings*, 296 U. S. 74, 78; *Cummings v. Deutsche Bank*, 300 U. S. 115, 118. A decision in such a suit is *res judicata* in another suit brought against the United States in the Court of Claims, *Escher v. United States*, 68 C. Cls. 473, 479, and the plaintiff in a suit brought against the custodian is not entitled to

costs or interest. *Vowinkel v. First Federal Trust Co.*, 15 F. (2d) 872, 874.

In *Cummings v. Societe Suisse*, 85 F. (2d) 287 (App. D. C.) (reaffirmed, 99 F. (2d) 387, certiorari denied, 306 U. S. 631) a Swiss corporation brought suit against the custodian pursuant to Section 9 of the Act, and the custodian purporting to represent the United States filed a counterclaim to recover property which, previously, had been returned to the corporation. It was held that the suit was in fact against the United States and that the custodian was authorized to interpose the counterclaim; that "it is of no consequence that, as a matter of convenience, they [the United States] have authorized and appointed an agent to be sued in their stead"; that the custodian is sued "only in his official capacity" and is suable "only because the United States have consented to be sued in his name" 85 F. (2d) at 289. It is the United States which has the obligation of complying with a judgment against the custodian. *Becker Steel Co. v. Cummings*, 296 U. S. 74, 81.

Suits brought against the Director General, of Railroads in his official capacity were likewise suits against the United States consented to by Section 10 of the Federal Control Act, c. 25, 40 Stat. 451, 456; *Davis v. O'Hara*, 266 U. S. 314, 317; *Dahn v. Davis*, 258 U. S. 421, 428. See also *Minnesota v. Hitchcock*, 185 U. S. 373, 387-388.

E. IT IS IMMATERIAL WHETHER THE FEDERAL HOUSING ADMINISTRATION, OR THE ADMINISTRATOR, IS A CORPORATION; IF MATERIAL, NEITHER IS A CORPORATION

In *United States v. Marzen*, 307 U. S. 200, 203, the Court found it unnecessary to determine whether Con-

gress, by authorizing the Administrator to sue and be sued, intended to give him "the status of a corporation or other entity distinct from the United States" and thereby to deprive the Administration of the statutory priority in bankruptcy of the United States.³⁹ Whether a federal agency is a corporation is doubtless a factor bearing upon whether it is suable, both as indicating a degree of separation from the United States and because it may be a reasonable inference that a corporation has the powers and liabilities usual to corporations. Compare *Keifer & Keifer v. R. F. C.*, 306 U. S. 381. But corporate status, without more, is an insufficient basis for inferring liability to attachment or execution even in a suit clearly authorized. Compare *Federal Land Bank v. Priddy*, 295 U. S. 229.

Here, however, it has been shown that the Federal Housing Administration functions as a regular part of the Government, and Congress has expressly authorized it to sue and be sued. The intimation of the Court in the *Marxen* case that the Administrator might be a corporation was based on his statutory authority to sue and be sued. And if the supposed corporate status depends on the consent to be sued it would beg the question to conclude from corporate status consent to be garnished, for whether consent to be sued includes consent to be garnished is the question to be determined. Accordingly it is thought that whether the Administrator or the Administration has corporate

³⁹ In *Keifer & Keifer v. R. F. C.*, 306 U. S. 381, 390-391, in a footnote the "Federal Housing Administrator" is listed among a compilation of "corporations discharging governmental functions."

status does not affect the decision of the question here presented.

If material, it would be difficult to say that Congress has made the Administrator or Administration a corporation. When Congress has created a corporation it customarily has expressly declared the institution either to be a corporation, a body corporate, to have the powers of a corporation; or to have perpetual succession.⁴⁰ It often expressly entitles the institution a

⁴⁰ Thus each Federal Land Bank shall become "a body corporate," 39 Stat. 360, 363; the American Legion is "created and declared to be a body corporate," 41 Stat. 284; the Belleau Wood Memorial Association is "created a body corporate," 42 Stat. 1441. "Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, and for purposes of jurisdiction shall be deemed a citizen of the state where it is located," 42 Stat. 1454, 1455; the Grand Army of the Republic "is hereby created a body corporate and politic," 43 Stat. 358, 359; the United States Blind Veterans of the World War is "hereby created and declared to be a body corporate," 43 Stat. 535; the American War Mothers is "hereby incorporated and declared to be a body corporate," 43 Stat. 966, 967; the Textile Foundation is "hereby created a body corporate," 46 Stat. 539; the Disabled American Veterans of the World War are "hereby created and declared to be a body corporate," 47 Stat. 320; each Federal Home Loan Bank shall become "a body corporate," 47 Stat. 725, 735; "there is hereby created a body corporate by the name of the Tennessee Valley Authority," 48 Stat. 58, 60; "there is hereby created the Cairo Bridge Commission, and by that name, style, and title said body shall have perpetual succession," 48 Stat. 577, 581; the Port Arthur Bridge Commission shall "have perpetual succession as a corporation," 48 Stat. 1008, 1009; the Federal Credit Union "shall have succession in its corporate name," 48 Stat. 1216, 1217; each National Mortgage Association "shall have succession" and power "to adopt and use a corporate seal," 48 Stat. 1246, 1253; the American National Theater and Academy is "hereby incorporated, constituted, and declared to be a body corporate," 49 Stat. 457, 458; the Marine Corps League is "hereby

corporation;⁴¹ and does not restrict its language to giving a certain official mere authority to sue and be sued.⁴²

Neither in creating the office of the Federal Housing Administrator (or the Administration) nor in the created a body corporate," 50 Stat. 558; "the name of the corporation shall be 'Southeastern University,'" 50 Stat. 697, 698. "There is hereby created * * * a body corporate * * * to be known as the United States Housing Authority," 50 Stat. 888, 889, 890.

⁴¹ For instance: Foreign Banking Corporations, 41 Stat. 378, 379; China Trade Act Corporation, 42 Stat. 849, 851; National Agricultural Credit Corporations, 42 Stat. 1454, 1461; Inland Waterways Corporation, 43 Stat. 360, 362; Reconstruction Finance Corporation, 47 Stat. 5; Regional Agricultural Credit Corporations, 47 Stat. 709, 713; Corporation of Foreign Security Holders, 48 Stat. 92, 93; Federal Deposit Insurance Corporation, 48 Stat. 162, 168; Production Credit Corporations, 48 Stat. 257; Federal Farm Mortgage Corporations, 48 Stat. 344; Federal Savings & Loan Insurance Corporation, 48 Stat. 1246, 1256; Disaster Loan Corporation, 50 Stat. 19; Farmers' Home Corporation, 50 Stat. 527; Federal Crop Insurance Corporation, 52 Stat. 31, 72, 73.

⁴² Section 60 of the Farm Credit Act of 1933, c. 98, 48 Stat. 257, 266, is fairly typical. It provides in part that "The Central Bank for Cooperatives, and the Production Credit Corporations, the Production Credit Associations, and the Banks for Cooperatives, organized under this Act, shall have succession, until dissolved in accordance with this or any other Act of Congress; shall have power to sue and be sued in any court; to adopt and use a corporate seal; to make contracts; to acquire, hold, and dispose of real and personal property necessary and incident to the conduct of their business; to prescribe fees and charges (which in any case shall be subject to the rules and regulations prescribed by the governor) for loans and other services; and shall have such other powers necessary and incident to carrying out their powers and duties under this or any other Act of Congress as may be provided by the governor in their charters or in any amendments thereto. Each such bank, association, or corporation shall, for the purposes of jurisdiction, be deemed a citizen of the State or District within which its principal office is located. * * *

amendment of August 23, 1935, did Congress entitle either a corporation, declare either to be a body corporate, grant either the usual powers of a corporation, give either perpetual succession, or provide for capital stock. It did not empower either to adopt and use a corporate seal,⁴³ or make either a citizen of the State or District where principal offices were located for purposes of jurisdiction. Nor is the Federal Housing Administration designed for purposes of profit to the Government.

It is significant, moreover, that in the National Housing Act of June 27, 1934, in which Congress created the Federal Housing Administration, it also created the Federal Savings and Loan Insurance Corporation, c. 847, 48 Stat. 1246, 1256, and in so doing it followed its general practice, providing in Section 402 that—

- (a) There is hereby created a Federal Savings and Loan Insurance Corporation (hereinafter referred to as "Corporation"), which shall insure. * * *
- (b) The Corporation shall have a capital stock of \$100,000,000. * * *
- (c) * * * the Corporation shall become a body corporate, and shall be an instrumentality of the United States, and as such shall have power—
 - (1) To adopt and use a corporate seal.
 - (2) To have succession until dissolved by Act of Congress. * * *

⁴³ The Federal Housing Administration, however, has a seal as a governmental agency, as authorized by Executive Order No. 7058 of May 29, 1935.

No such provision, relative to the Federal Housing Administrator or Administration, is in the Act. Similar corporate status is provided in clear and certain terms by Section 301 of the National Housing Act for national mortgage associations, but they are not made "an instrumentality of the United States" nor are their powers conferred on them "as such."

The Federal Savings and Loan Insurance Corporation and the national mortgage associations, without limiting language are empowered "to sue and be sued, complain and defend, in any court of law or equity, State or Federal" (Sec. 301 (c) (3); Sec. 402 (c) (4)). In the case of the Federal Savings and Loan Insurance Corporation the grant of power to sue and be sued "as such" (as "an instrumentality of the United States") may indicate an intention to limit the effect of the power.

Except for the "sue-and-be-sued" clause added by the amendment of August 23, 1935,⁴⁴ here involved, there is nothing in the National Housing Act suggesting that the Federal Housing Administrator or the Administration is a corporation or is in any wise assimilated thereto, except possibly also Section 512 (c) of Title V of the Act, which in providing penalties, makes reference to "intent to defraud the Administration or the Cor-

⁴⁴ The relevant legislative records do not offer light on this provision of the Banking Act of 1935. The Senate Report (No. 1007) on H. R. 7617, 74th Congress, 1st Session, S. No. 9880, p. 24) merely states that purpose of the amendment is to be "clarifying." The House Report confines itself to a mere statement of the substance of the provision (H. Rept. No. 1822 on H. R. 7617, 74th Congress, 1st Session, p. 57, S. No. 9889).

poration [Federal Savings and Loan Insurance Corporation] or any other body, politic or corporate, or any individual. Language unconvincing in view of the joint reference.

~~F. THE ADMINISTRATOR'S AUTHORITY TO BE SUED EXTENDS ONLY TO TRANSACTIONS IN CARRYING OUT THE ACT AND NOT TO PROCEEDINGS BASED ON CLAIMS AGAINST THIRD PERSONS~~

As shown the jurisdiction of the courts below depends strictly on whether the United States has consented to the action, and it is settled that suit against the United States can be maintained only in the manner and subject to the restrictions prescribed by the consenting statute. *Munro v. United States*, 303 U. S. 36,

41. Similarly, it has been uniformly held that a statute dealing with the relaxation of sovereign immunity from suit must be strictly construed.⁴⁵ Only, as in the *Kwiter* case, where faced with a general background of federal legislation and national policy indicating hostility to the immunity, has the Court found waiver of immunity elsewhere than in plain statutory words. The traditional view of the Court is that the liability of the Government to suit should not be enlarged beyond what the statutory language requires;⁴⁶ that the letter of such consent is its limit—"no matter how beneficial they [the courts] may deem or in fact might be their possession of a larger jurisdiction over liabilities

⁴⁵ *United States v. Michel*, 282 U. S. 656; *Eastern Transportation Co. v. United States*, 272 U. S. 675; *Price v. United States*, 174 U. S. 373; *Schillinger v. United States*, 155 U. S. 163.

⁴⁶ *Eastern Transportation Co. v. United States*, 272 U. S. 675, 686.

of the Government." 47 The recent view, less strict, in the *Keifer* case, met an asserted immunity amounting to "legal irresponsibility," an irresponsibility not involved in the immunity here asserted.

Hence the consent to garnishment proceedings must be found, if at all, in Section 1 of the National Housing Act, as amended, which provides:

The Administrator shall, in carrying out the provisions of this title [Title I] and Titles II and III be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or federal.

The phrase "in carrying out the provisions of this title and Titles II and III" 48 clearly indicates a purpose to exclude cases unrelated to the Administrator's own duties or liabilities. The Administrator, it is submitted, is suable under the statutory consent only where the plaintiff is a party to a transaction with him related to carrying out the provisions of those titles. Hence the consent does not include garnishment proceedings or other derivative actions based on claims against third persons, even though the garnished claim is one owing

⁴⁷ *Schillinger v. United States*, 155 U. S. 163, 166.

⁴⁸ Title I deals with Housing Renovation and Modernization; Title II with Mortgage Insurance; Title III with National Mortgage Associations; Title IV with Insurance of Savings and Loan Accounts; Title V with Miscellaneous (amendments of the Federal Home Loan Bank Act, the Farm Credit Act of 1933, the Federal Reserve Act, the Home Owners' Loan Act of 1933, the Act entitled "An Act relating to contracts and agreements under the Agricultural Adjustment Act" approved January 25, 1934, and the Interstate Commerce Act; and providing penalties for offenses against the Administration or the Federal Savings and Loan Insurance Corporation). Titles IV and V contain no provision to be carried out by the Administrator.

to the principal debtor by reason of transactions, such as employment, in carrying out the provisions of those titles.

In *Sloan Shipyards v. Fleet Corporation*, 258 U. S. 549, the Court had held that the Shipping Board was originally subject to unrestricted suit by reason of its incorporation under the laws of the District of Columbia, and that the subsequent bestowal on it of governmental powers did not give it immunity from suit generally, whether in contract or tort. In *McCarthy v. United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547, the Shipping Board was nevertheless held immune to garnishment proceedings. A sharp distinction was drawn between suits "upon its obligations" and "attachment or garnishment in cases unrelated to its own duties or liabilities" (53 F. (2d) 923 at 923-924). The consent to be sued in Section 1 of the National Housing Act, as amended, is no broader than the suability of the Shipping Board as determined in the *Sloan* case.

Although in *Federal Land Bank v. Priddy*, 295 U. S. 229, the Court held a Federal Land Bank, a governmental corporation, subject to seizure of its property by way of attachment and execution to satisfy a liability to its own creditor in an action, authorized by statute, against the Bank, the Court has never held the Government, or its instrumentalities or corporations, subject to garnishment to satisfy the claim of one not its own creditor who happened to be a creditor of the Government's obligee. Moreover, it would seem from the Court's reasoning in

the *Priddy* case that mere liability to suit, without further indicia of Congressional intent, does not imply liability to attachment or execution. And the indicia of Congressional intent relied on to sustain the right of attachment and execution against the Federal Land Bank in the *Priddy* case⁴⁹ are missing in the case of the Federal Housing Administrator. Hence it is doubtful, at least, whether attachment or execution would lie to satisfy even a direct claim against the Administrator. Even more must be shown to support garnishment, a derivative action by a stranger to the Government's transaction.⁵⁰

Moreover, in the *Priddy* case the Court expressly reserved the question whether a different result would be required if it were shown that the attachment would directly interfere with any function performed as a federal instrumentality. The interference which would result here, and reasons of policy and practical consid-

⁴⁹ Private business characteristics of the Federal Land Bank: its stock not contemplated to be even chiefly government owned; operations in part at least for profit; legislative treatment similar to that accorded joint stock land banks; use of qualifying phrase "as fully as natural persons" in prescribing liability to suit; specific grant of immunity from taxation. (Cf. sec. 208 of the National Housing Act disclaiming exemption from taxation of real property acquired and held by the Administrator; but cf. sec. 204 (d) providing exemption of debentures issued by Administrator. Similar disclaimer and similar exemptions are included in secs. 307 and 402 (e) as to National Mortgage Associations and Federal Saving and Loan Insurance Corporation.)

⁵⁰ And if the derivative action is maintainable, still more need be shown to warrant execution to satisfy that derivative judgment. The judgments below complained of allow execution for their satisfaction (R. 11; R. 15). This matter of execution is discussed in greater length, *infra*, pp. 51-52.

erations weighing against an implication of consent to garnishment here, have been set forth (*supra*, pp. 19-33).

The legislative history of the Banking Act of 1935, which added the consent provision to the National Housing Act, contains no indication of an intention to give that provision a broader implication than its words express.⁵¹

So far as we are aware, the only legislation expressly authorizing garnishment proceedings against a Government officer or agency is Section 30 of the Trading with the Enemy Act, c. 167, 45 Stat. 254, 275, and the reason for that exceptional provision is to prevent the custodian from impairing the rights of third persons against seized property. This jealous restraint indicates in the garnishment area a far different "climate of opinion" than in the suability area, where Congress has been contrastingly liberal in granting consent to be sued. In the *Keifer* case the Court found (306 U. S. at 390-391) forty instances where Congress had authorized Government agencies to sue and be sued, and only two instances where such authority was not ex-

⁵¹ The report of the Senate Committee on Banking and Currency which reported out the measure (S. Report No. 1007, 74th Congress, 1st Session, May 13, 1935, to accompany H. R. 7617, at p. 24) limits its comments as to that, and other provisions, to the following sentence: "Section 343, which was not included in the House bill, makes several minor clarifying amendments to the provisions of the National Housing Act relating to suits brought under such act, the insurance of loans for financing alterations, repairs, and improvements on real property, and mortgage insurance." (Emphasis supplied.) It could scarcely be contended that a garnishment proceeding to satisfy a claim against an employee of the Administration is a suit brought under the National Housing Act.

plicity conferred (*ibid.*, p. 392). In any event there is no general historical background of legislation or national policy (such as there was in the *Keifer* case) from which it can be assumed that Congress intended to consent to garnishment by consenting to suits against the Administrator with respect to his functions under the Act.

Moreover the consent provision here in question was enacted against the background of federal judicial decisions barring garnishment against the United States and even its suable instrumentalities (*Buchanan v. Alexander*, 4 How. 20; *McCarthy v. United States Shipping Board Merchant Fleet Corporation*, 53 F. (2d) 923 (App. D. C.), certiorari denied, 285 U. S. 547), and should be construed in the light of those decisions. The prevailing view of state courts, at the time of the enactment of the "sue-and-be-sued" clause (and since unchanged) was likewise that in the case of public bodies authority to be sued is not authority for garnishment.⁵² Abrogation of the rule judicially enunciated should require an explicit statute.

⁵² *Central of Georgia Ry. v. City of Andalusia*, 218 Ala. 511; *Mayor and City Council of Baltimore, Garnishee v. Root*, 8 Md. 95, 106; *State of Washington ex rel. Summerfield v. Tyler*, 14 Wash. 495, 498; *Dural County v. The Charleston Lumber Co.*, 45 Fla. 256, 265; *Skelly v. Westminster School District*, 103 Calif. 652, 659. Cf. *Dickens v. Bransford Realty Co.*, 141 Tenn. 387, 391; *City of Chicago v. Hasley*, 25 Ill. 595. But cf. *Packard Phoenix Motor Co. v. American LaFrance Corp.*, 37 Ariz. 35, 42 (charter authorizing municipality to "sue and be sued . . . in all actions and proceedings whatsoever"). Contra: *Rodman v. Musselman*, 75 Ky. 354, 356; *Waterbury v. Commissioner*, 10 Mont. 515, 520.

There is no more basis in the suability provisions of the National Housing Act, as amended, for garnishment against the Administrator than there is in the Tucker Act, c. 359, 24 Stat. 505, for garnishment against the United States. If the Administrator is garnishable merely because suable, as held below, by a parity of reasoning the United States would be garnishable, where the claim against the United States sought to be garnished was one that could be the subject of suit against the United States under the Tucker Act. Since its enactment in 1887, we know of no case where the Tucker Act has been utilized as a basis of garnishment against the United States.

III

THE JUDGMENTS BELOW IMPROPERLY ALLOW EXECUTION

Execution is allowed under the judgments both of the trial court (R. 11) and of the court below (R. 15), and the execution allowed in this case is not limited to funds owing to the employee and available for payment to him.⁵³

⁵³ The judgment of the trial court is that the "plaintiff do recover against the said garnishee defendant the *amount* of his indebtedness to the principal defendant and that plaintiff have execution therefor" (emphasis supplied) (R. 11). The judgment of affirmance provides "that the appellee do recover of the appellant, his costs, to be taxed, and that he have execution therefor" (R. 15). The applicable Michigan statute provides: " * * * when the garnishee shall be adjudged liable as such except when it is otherwise specially provided, judgment shall be rendered and execution issue against such garnishee, *his own goods and estate*, for the *amount* of the judgment and costs against the principal defendant, if the garnishee's liability shall be for so much, otherwise for the *amount* thereof." (Emphasis supplied.) (Mich. Comp. Laws (1929), sec. 14,887; Mich. Stats. Ann. (1938), sec. 27, 1885).

The practical interference with the functions of the Administrator when execution is attempted not merely out of funds available for paying the claim owing to the principal debtor but against other property of the United States is effectively illustrated by the proceedings in *United States v. Winkle Terra Cotta, Inc.*, No. 11,547 pending on appeal before the United States Circuit Court of Appeals for the Eighth Circuit, the facts of which are set forth *supra*, pp. 20-21.⁵⁴ Here as there, the state court did not attach any specific credit or thing owing to the employee, but undertook to award a judgment *in personam* against the Administration. Obviously the judgment cannot properly be enforced against other Federal Housing Administration property and credits belonging to the United States.

Conceivably the Government might consent to subject its property to execution proceedings to satisfy judgments against it (cf. *Federal Land Bank v. Priddy*, 295 U. S. 229, 234, 237). But that Congress has not so consented here seems plain. The administrative branch of the Government cannot and does not pay any judgment until money has been appropriated for that purpose by Congress, to which all final judgments against the United States are reported (c. 1630, 33 Stat. 394, 422, 31 U. S. C. 583 (2), *Reese v. Walker*, 11 How. 272, 291; *Cincinnati Soap Co. v. United States*, 301 U. S. 308, 321). It is difficult to attribute to Congress an intention to permit satisfaction of garnish-

⁵⁴ See also matter included in the Appendix, *infra*, pp. 72-75.

ment judgments out of money, or property acquired with money, appropriated for other purposes.

CONCLUSION

The immunity here asserted is well supported in settled principles, reasons of policy and practical considerations. There is no occasion in this case to construe the authority to be sued as extending to garnishment: It is therefore respectfully submitted that the judgment of the Supreme Court of Michigan should be reversed.

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DECEMBER 1939.

APPENDIX

SECTION 1 OF TITLE I OF THE NATIONAL HOUSING ACT (ACT OF JUNE 27, 1934, C. 847, 48 STAT. 1246)

CREATION OF FEDERAL HOUSING ADMINISTRATION

SECTION 1. The President is authorized to create a Federal Housing Administration, all of the powers of which shall be exercised by a Federal Housing Administrator (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate, shall hold office for a term of four years, and shall receive compensation at the rate of \$10,000 per annum. In order to carry out the provisions of this title and titles II and III, the Administrator may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, responsibilities, and tenure, and fix their compensation, without regard to the provisions of other laws applicable to the employment or compensation of officers or employees of the United States. The Administrator may delegate any of the functions and powers conferred upon him under this title and titles II and III to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for lawbooks and books of reference,

and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

SECTION 344 (A) OF THE BANKING ACT OF 1935 (ACT OF AUGUST 23, 1935, C. 614, 49 STAT. 684, 722)

SEC. 344. (a) Section 1 of the National Housing Act is amended by adding at the end thereof the following new sentence: "The Administrator shall, in carrying out the provisions of this title and titles II and III, be authorized, in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal."

EXCERPTS FROM FIRST ANNUAL REPORT OF THE FEDERAL HOUSING ADMINISTRATION (HOUSE DOCUMENT NO. 88, 74TH CONGRESS, 1ST SESSION).

Pages 4-5:

SUMMARY OF PRINCIPAL FUNCTIONS

The activities of the Federal Housing Administration are centered on the bringing of private capital to an enlarged and more fruitful use in real property. Its prescribed functions may be outlined briefly under three headings, corresponding respectively to titles I, II, and III of the National Housing Act.

I. CHARACTER LOANS FOR MODERNIZING REAL PROPERTY

To encourage the immediate modernization, repair, and improvement of homes and other small properties, it is provided that any advances of credit or loans made

for this purpose may be insured by the Federal Housing Administration against losses up to 20 percent of the total amount of such advances made by any bank or other approved financial institution. These loans are based primarily on the individual property owner's character and ability to repay.

II. INSURED MORTGAGE LOANS

A system of mutual mortgage insurance is provided as a means of instituting a thorough reform in the home financing structure, and to assure the release of credit required for the impending revival in home-building activity; hence, like the modernization credit plan, it becomes a vital element in the whole recovery program of the Federal Government. Mortgages, in order to be eligible for insurance, must conform to certain conditions set forth in the Act and in regulations prescribed by the Administrator. These conditions aim to develop practices that protect the borrowers against excessive charges, and in operation will discourage the assumption of obligations above the borrower's reasonable capacity to pay. They provide for complete retirement of the mortgage by means of small amortization payments at frequent intervals.

The resulting pooling of risks is designed to assure lower charges to borrowers as a group, safeguard the funds of lending institutions acting on behalf of millions of small savers, and provide a more stable and secure source of home mortgage credit, especially for loans up to a higher percentage of the appraised value than those now commonly available from institutions lending on first mortgages.

III. NATIONAL MORTGAGE ASSOCIATIONS

National mortgage associations, organized with private capital, are authorized to be established in order

to develop a market for insured mortgages. Thus, insured mortgages will become more desirable to certain types of institutions.

These associations should aid in the flow of capital for home financing from areas with surplus funds seeking safe, long-term investment, to areas where such funds are not adequate to meet local home financing needs.

Pages 22-24.

PERSONNEL

Section 1 of the National Housing Act exempted the Federal Housing Administration from the provisions of the classified civil service. All appointments of the employees in the District of Columbia and the field were made in accordance with the provisions of Executive Order No. 6746, dated June 21, 1934, and from eligible registers of applicants developed by the personnel office on a basis of their fitness for the particular positions involved.

Employees selected to assist in the administration of the mutual mortgage insurance plan were required to have years of experience in amortized mortgage procedure. Those chosen for the position of valuator, or appraiser, not only had to prove 10 years of experience in their field, but were also given a special training in a school conducted by the Administration.

As far as possible the initial appointments were made in accordance with the grades and salaries of the Classification Act of 1923 and were apportioned among the several States in accordance with the spirit of the Apportionment Act, which provided that appointments in the Government service should be on the same ratio as the population of the respective States. Owing to the urgency of the work, the classification of employees as to grade and salary was made on a tentative basis.

In cooperation with the Civil Service Commission, a classification survey is being made of all positions. As rapidly as the survey is completed for any group or class of positions, the employees in these groups are immediately classified in strict accordance with the Classification Act. In case an employee or group of employees feel that the classification of his or their position as determined by the Federal Housing Administration has done him or them an injustice, arrangements have been made with the Civil Service Commission to consider the appeal of such cases and the Federal Housing Administration will abide by the findings of the Civil Service Commission insofar as they relate to the grade in pay of a particular position or group of positions. As soon as the survey is completed for the employees in the District of Columbia, the survey will be extended to the field. All of the employees of the Federal Housing Administration are expected to be fully classified by or before June 30, 1935.

The fact that 110,000 applications for positions have been received materially increased the cost of selecting the proper personnel.

Page 25:

Although section I of the act authorized the Administrator to make the expenditures without regard to other provisions of the law governing the expenditure of public funds, it was decided as a matter of policy to conform as nearly as possible to the established procedure governing the expenditure of public funds.

The Comptroller General of the United States has cooperated to establish the necessary accounting system and procedure and to preaudit all vouchers paid on account of salary and expenses. The services of the Chief Disbursing Officer of the United States have been utilized in making the disbursements.

**EXCERPTS FROM FIFTH ANNUAL REPORT OF THE FEDERAL
HOUSING ADMINISTRATION (HOUSE DOCUMENT NO. 273,
76TH CONGRESS, 1ST SESSION)**

Page 157:

The accounts and records of the Federal Housing Administration have been established and maintained at all times in accordance with governmental procedure, adapted to the requirements of the National Housing Act, and are centrally maintained in Washington, D. C. All funds are deposited with the Treasurer of the United States and payments of expenses and other obligations are made through the Chief Disbursing Officer of the Treasury Department.

RECEIPTS, DISBURSEMENTS, AND APPROPRIATIONS

Receipts of the Federal Housing Administration are received principally in the forms of (a) allocations from the Reconstruction Finance Corporation, (b) collections of appraisal fees and insurance premiums under title II, (c) rents and sales proceeds of properties acquired after defaults under title II, (d) recoveries under defaulted title I notes, (e) interest on investments, and (f) miscellaneous receipts.

Disbursements by this Administration are made principally for (a) salaries and expenses, (b) furniture and equipment, (c) property management, (d) cash settlements of title I claims, (e) purchases of debentures of this Administration, (f) investments, and (g) miscellaneous purposes.

Estimates for annual salaries and general expenses of operating this Administration are regularly submitted to Congress in cooperation with the Director of the Budget. The annual budget is partly met by outright appropriation by the Congress through allocations from the Reconstruction Finance Corporation (in accordance

with the provisions of sec. 4 of the National Housing Act) while the remainder is made available from the mortgage insurance funds.

During the fiscal year 1938 the \$9,400,000 appropriation was met by a \$4,400,000 allocation by the Reconstruction Finance Corporation and a \$5,000,000 transfer from the mutual mortgage insurance fund. During the current fiscal year the \$8,500,000 appropriation is being met by \$5,000,000 from the fund, and \$3,500,000 from the Reconstruction Finance Corporation. No allocation for operating expenses has yet been made from the Housing Insurance Fund, which was established under the 1938 amendments. (The general authority for charging operation expenses to the funds is contained in sec. 205 (b) and 207 (f) of the National Housing Act. The specific authorizations for such charges are contained in the Independent Offices Appropriation Acts of 1938 and 1939 and are based upon decisions of the Administrator as approved by the Director of the Budget.)

Page 165:

TITLE II. MUTUAL MORTGAGE INSURANCE ACCOUNTS

Insurance contracts on small home mortgages executed in the field under section 203 of the act are reviewed in Washington for the purposes of determining their compliance with the rules and regulations and establishing proper insurance accounts and records.

Each collection remitted by the lending institution to the Federal Housing Administration is identified with its individual mortgage record, verified and deposited with the Treasurer of the United States to the credit of the mutual mortgage insurance fund.

The receipts from insurance premiums and fees from rental housing projects insured under section 207 prior

to the amendments to the National Housing Act of February 3, 1938, are deposited in the mutual mortgage insurance fund.

In accordance with the provisions of the above amendments a separate housing insurance fund was established on February 3, 1938 (see p. 173), to which receipts from all new housing projects insured under sections 207 and 210 are being credited.

Page 167:

In accordance with arrangements made between the Federal Housing Administrator and the Secretary of the Treasury, the Division of Loans and Currency of the Treasury Department issues debentures upon the acquisition of property by the Administrator, paying interest thereon and redeeming the debentures upon request of the Administrator and the approval of the Secretary of the Treasury. In this way the debentures are recorded and handled in the same manner as obligations of the United States, and the Federal Housing Administration has the additional advantage of an interdepartmental check and control over the debentures.

Page 169:

As funds are deposited in the Treasury and as cash accumulates in excess of the needs of the Federal Housing Administration, the Secretary of the Treasury, upon request of the Administrator, invests such cash in obligations of the United States or those guaranteed by the United States.

Page 174:

ADMINISTRATIVE ACCOUNTS

All expense and other vouchers of the Federal Housing Administration are administratively audited and

approved in the Washington office. Those which are regular in nature, such as purchase vouchers under general contracts, ordinary travel expense vouchers, etc., are sent directly to the Chief Disbursing Officer of the Treasury Department for payment. Vouchers which are unusual or on which there have not been established well-defined precedents are forwarded to the Comptroller General of the United States for pre-audit. There is no undue accumulation of unpaid accounts on hand.

LETTER DATED JULY 11, 1936, FROM THE ACTING COMPTROLLER GENERAL OF THE UNITED STATES TO THE ADMINISTRATOR, FEDERAL HOUSING ADMINISTRATION.

COMPTROLLER GENERAL OF THE UNITED STATES,

Washington, July 11, 1936.

A-51615

The ADMINISTRATOR,

Federal Housing Administration.

SIR:

In effectuating the accounting requirements of the Federal Housing Administration which have for some time past been the subject of cooperative study by representatives of this office and officials of the Federal Housing Administration, there is hereby prescribed, pursuant to section 309 of the Budget and Accounting Act, 1921, a system of administrative accounts which follows generally the uniform accounting system and which it is believed will meet the needs of the Administration. The following general-ledger accounts will be maintained on Standard Form No. 1014 (General Ledger):

Debit Balance Accounts

- 01. Treasury Cash (by symbols and titles)
- 03. 31 Disbursing Officer's Cash — Disbursing Funds (by symbols and titles)
- 03. 32 Disbursing Officer's Cash—Receipts and Repayments (by symbols and titles)
- 03. 37 Disbursing Officer's Cash—Special Deposits
- 07. Retirement and Disability Funds
- 08. 1 Investments (by classes)
- 08. 11 Accrued Interest Receivable on Investments (by classes)
- 08. 111 Premium on Bonds Purchased (by classes)
- 08. 112 Discount on Bonds Purchased (by classes)
- 08. 2 Debentures Repurchased
- 09. 1 Loans Receivable (by classes)
- 10. 1 Accounts Receivable
- 10. 2 Rents Receivable (by group accounts)
- 20. Stores
- 30. Fixed Property (by group accounts)
- 33. Equipment
- 39. Undistributed Expenditures
- 40. 1 Current Costs—Administration
- 40. 2 Current Costs—Title I Loans
- 40. 3 Current Costs—Redemption of Debentures and Certificates of Claim (by group accounts)
- 40. 4 Current Costs — Interest Expense (by group accounts)
- 40. 5 Current Costs—Real Estate Maintenance Expense (by group accounts)
- 40. 6 Current Costs—Miscellaneous Real Estate Expense (by group accounts)

Credit Balance Accounts

- 64.1 Retirement Contributions—Civil Service Form 2806
- 64.11 Retirement Contributions—Pay Card
- 66. Unapplied Special Deposit Collections
- 68.1 Debentures Payable (by group accounts)
- 68.11 Accrued Interest Payable on Debentures (by group accounts)
- 68.2 Certificates of Claim Payable (by group accounts)
- 68.21 Accrued Interest Payable on Certificates of Claim (by group accounts)
- 68.3 Accounts Payable—Excess Profits Due Mortgagors (by group accounts)
- 70. General Fund Receipts (by symbols and titles)
- 71.1 Income—Interest on Investments (by classes)
- 71.2 Income on Real Estate (by group accounts)
- 71.3 Income—Insurance Premiums and Appraisal Fees (by group accounts)
- 80. Invested and Donated Capital
- 90.1 Unallotted Appropriations (by symbols and titles)
- 90.11 Unexpended Allocations—Mutual Mortgage Insurance Fund (by group accounts)
- 90.2 Unencumbered Allotments
- 90.3 Unliquidated Encumbrances
- 90.4 Expended Appropriations
- 90.5 Expended Allocations—Mutual Mortgage Insurance Fund (by group accounts)
- 90.51 Repayments—Mutual Mortgage Insurance Fund (by group accounts)

It is further contemplated that allotment ledger accounts will be maintained on Standard Form No. 1015 (Allotment Ledger).

For the information and guidance of those directly responsible for the operation of the system there are attached: (1) Chart of General Ledger Accounts (Exhibit A); (2) Pre Forma Journal Entries to General Ledger Accounts (Exhibit B); and (3) Description and Operation of Allotment Ledger (Exhibit C).

From the accounting records herein provided there should be prepared at the close of each month, in form as per attached exhibits, the following statements:

(1) Statement of Balances—Central Ledger Accounts.

(2) Schedule of Balances Showing Status of Appropriations.

(3) Statement of Allotment Accounts.

Copies of the above statements, together with transcripts of the general ledger accounts "01. Treasury Cash (by symbols and titles)," should be forwarded to the Accounting and Bookkeeping Division, General Accounting Office, as soon as possible after the close of each month, upon receipt of which the appropriation balances shown therein will be checked against the records of this office and a reconciliation statement furnished the Administration.

Should experience demonstrate the desirability for changes in the accounts and procedure herein prescribed, prior approval thereof by this office should be obtained.

The cooperation of officials of the Federal Housing Administration is appreciated.

Respectfully,

R. N. ELLIOTT,

Acting Comptroller General of the United States.

Incllosures

LETTER DATED JANUARY 23, 1936, FROM THE COMPTROLLER GENERAL OF THE UNITED STATES TO THE ADMINISTRATOR, FEDERAL HOUSING ADMINISTRATION

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, January 23, 1936.

A-51615

ADMINISTRATOR,

Federal Housing Administration.

SIR: There was received by your direction the letter of your Comptroller, dated October 19, 1935, as follows:

In connection with the administration of the National Housing Act, the Federal Housing Administration receives the following collections:

Collections--Insured Losses (Title I, Act of June 27, 1934).—These receipts are the results of the collection efforts of the Federal Housing Administration to recover on the notes receivable and collateral assigned to the Federal Housing Administration as the results of the insured losses paid financial institutions under the provisions of Title I, Section 3 of the Act, *supra*. It is recommended that this be covered in the Treasury as a miscellaneous receipt under the caption suggested.

Collections on Loans to Financial Institutions.—These collections are repayments on the advances made under the provisions of Title I, Section 3 of the Act, to financial institutions secured by insured modernization loans. In view of the fact that these are real loans which are fully secured, etc., and not ordinary expenditures or sales of Government property, it is recommended that these funds be handled as a repayment to OX-681, Renovation and Modernization Loans and Insurance.

Interest on Loans to Financial Institutions.—These collections are in payment of interest to the Federal Housing Administration on account of loans made under the provisions of Section 3

of the Act. It is recommended that they be covered in the Treasury as miscellaneous receipts.

Premiums, Mutual Mortgage Insurance.—These are trust funds received from the mortgagees as a part of their contribution to the Mutual Mortgage Insurance Fund on account of insured mortgages. The premiums are paid annually in advance. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

Appraisal Fees, Mutual Mortgage Insurance.—These are collections from the mortgagees to partially reimburse the Government for the cost of appraising the property offered as security for insured mortgages. It is recommended that these collections be covered in the Treasury as miscellaneous receipts.

Interest on Investments, Mutual Mortgage Insurance Fund.—These are trust fund receipts on the investments of the Mutual Mortgage Insurance Fund. It is recommended that they be covered in the Treasury as trust funds for the account of the Mutual Mortgage Insurance Fund.

Your decision as to the proper receipt symbols and titles and instructions as to the disposition of these funds are requested. The foregoing receipt titles are suggested for your consideration in assigning symbols and titles. As received, the collections are deposited as "Special Deposits" with the Chief Disbursing Officer of the United States.

In the absence of any provision in Title I of the act of June 27, 1934, 48 Stat. 1246, to the contrary, all receipts in connection with the operations under said title are for covering into the Treasury as miscellaneous receipts. Accordingly, the following receipt symbols and titles have been set up on the books of the Government, and such collections now in the hands of disbursing

officers should be immediately covered into the Treasury to the credit of the appropriate account:

7051 Collections—Insured Losses (Title I, Act of June 27, 1934)

7052 Collection of Loans to Financial Institutions

7053 Interest on Loans to Financial Institutions

Section 202 of said National Housing Act of June 27, 1934, 48 Stat. 1248, provides:

There is hereby created a Mutual Mortgage Insurance Fund (hereinafter referred to as the "Fund"), which shall be used by the Administrator as a revolving fund for carrying out the provisions of this title as hereinafter provided, and there shall be allocated immediately to such Fund the sum of \$10,000,000 out of funds made available to the Administrator for the purposes of this title.

In view of this provision for a revolving fund to carry out the provisions of this title, any collections made in connection with the carrying out of said provision—and with respect to which the act does not provide for other disposition—are properly for credit to the said revolving fund. Accordingly, collections received, such as premiums, appraisal fees, and interest on investments, will be deposited to the credit of said revolving fund, and the title of the account now appearing on the books of the Government under the caption "OS353 Mutual Mortgage Insurance Fund, Federal Housing Administration, S. F." has been changed to "OS353 Mutual Mortgage Insurance Fund, Federal Housing Administration, Revolving Fund."

The funds heretofore deposited to the credit of the receipt account "8146 Interest Earned on Investments, Mutual Mortgage Insurance Fund, Federal Housing Administration" and appropriated to account "OT355 Mutual Mortgage Insurance, Earned Interest Fund,

Federal Housing Administration. Trust Fund" will be transferred to the revolving fund by transfer appropriation warrant, and the use of the two accounts for recording interest collections will be discontinued.

Respectfully,

J. R. McCauley,

Comptroller General of the United States.

GENERAL ORDER NO. 2, FEDERAL HOUSING ADMINISTRATION, AS REVISED MAY 7, 1937

FEDERAL HOUSING ADMINISTRATION
WASHINGTON, D. C.

GENERAL ORDER NO. 2 REVISED

To the Heads of all Divisions and Offices:

Subject: Authority and Procedure for Expenditures.

General Order No. 2, revised dated August 6, 1934, is hereby cancelled and the following substituted therefor:

I. GENERAL AUTHORITY AND POLICY

Section 1 of the National Housing Act provides:

* * * The Administrator may delegate any of the functions and powers conferred upon him under this title and titles II and III to such officers, agents, and employees as he may designate or appoint, and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing, and binding) as are necessary to carry out the provisions of this title and titles II and III, without regard to any other provisions of law governing the expenditure of public funds. All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

Although the provisions of the law, *supra*, provide great latitude regarding the expenditures made on account of the Federal Housing Administration, it is ordered that in the incurring of obligations and the payment of expenditures that the established government procedures be followed so far as practicable in each instance.

II. PROCEDURE

To provide an orderly procedure for the procurement and distribution of supplies, it is ordered that:

1. The Heads of the Divisions, or such officials as may be designated by them, shall requisition all supplies, printing and binding equipment, etc. (whether desired by purchase, loan or on consignment) through the Purchase and Property Officer. The Purchase and Property Officer upon receipt of these supplies and/or materials delivered as above will obtain proper receipts, which will be retained by him as a record of the delivery.

2. Every purchase involving an expenditure in excess of \$100 shall be made after advertising for bids in accordance with the provisions of Section 3709 of the Revised Statutes, except:
 - a. Where the exigency of the service requires the immediate delivery of the articles that will not admit of the delay incident to advertising;
 - b. Where there is only one source of supply; and
 - c. Where for any other reason it is impracticable to secure competition.

3. Bids shall be awarded to the bidder offering the lowest price on articles meeting the advertised specifications unless there exists a satisfactory reason for rejection which must be fully explained. After award is made a formal contract will be entered into if the amount involved is over \$1,000. Where the amount involved is less than \$1,000 no formal contract need be executed.

4. When it is deemed necessary to make an emergency purchase involving an expenditure in excess of \$100 without competition bidding under the provisions of Paragraph 2a above, the matter shall be submitted to the Executive Assistant or Office Manager for approval. The necessity for emergency purchases must be clearly explained and the explanation shall accompany the voucher covering payment.

5. So far as practicable, facilities and stock of the Procurement Division, Treasury Department, shall be utilized.

6. Purchase orders for all items in excess of \$500 and purchases made under the provisions of Paragraph 2a, above, shall be approved by the Executive Assistant or the Office Manager.

STEWART McDONALD,
Administrator.

67 Rev. 5 7 37

EXCERPT FROM MIMEOGRAPH INSTRUCTION DATED MAY 16, 1938, TO DIRECTORS AND MANAGERS OF ALL FIELD OFFICES, FROM ABNER H. FERGUSON, GENERAL COUNSEL, FEDERAL HOUSING ADMINISTRATION:

FEDERAL HOUSING ADMINISTRATION,
Washington, D. C., May 16, 1938.

To: DIRECTORS AND MANAGERS OF ALL FIELD OFFICES.

Subject: A. * * *

B. Service of Garnishment Papers Upon Officials or Employees of the Federal Housing Administration.

A. * * *

B. State and District Directors should also accept service of papers in garnishment proceedings under

which the Administrator is named as garnishee. The papers should be immediately forwarded to the General Counsel in Washington, who will promptly turn them over to the Department of Justice to be forwarded to the United States Attorney in authority in the jurisdiction where the case is pending. If it appears that a judgment by default may be entered before the papers can be put in the hands of the United States Attorney, the Director should arrange with counsel issuing the garnishment for a postponement of time for a sufficient period to permit the United States Attorney to file an answer. [Emphasis supplied.]

ABNER H. FERGUSON,
General Counsel.

MATTER PERTAINING TO UNITED STATES OF AMERICA v.
WINKLER TERRA COTTA, INC., NO. 11547 PENDING IN
UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH
CIRCUIT

RE TELEGRAM DATED JUNE 20, 1939, FROM J. W. KUHLMAN,
DISTRICT DIRECTOR OF FEDERAL HOUSING ADMINISTRATION,
ST. LOUIS, MO., TO ABNER H. FERGUSON, GENERAL COUNSEL,
FEDERAL HOUSING ADMINISTRATION

WJ163 36 Govt-St. Louis, Mo., Jun. 20, 1939 109P.

ABNER FERGUSON:

General Counsel, F. H. A.:

Title to Decker property 002966 shows judgment against F. H. A. favor Winkler Terra Cotta. Purchaser wants definite assurance that he will not suffer because of this judgment. Wire answer as deal was to be closed today.

J. W. KUHLMAN.

2. LETTER DATED JULY 25, 1939, FROM J. W. KUHLMAN, DISTRICT DIRECTOR OF FEDERAL HOUSING ADMINISTRATION, ST. LOUIS, MO., TO ABNER H. FERGUSON, GENERAL COUNSEL, FEDERAL HOUSING ADMINISTRATION

Office of
DISTRICT DIRECTOR
SAINT LOUIS, MO.

FEDERAL HOUSING ADMINISTRATION,

July 25, 1939.

Air Mail

Re United States of America

v.

Winkle Terra Cotta, Inc.

MR. ABNER H. FERGUSON,

General Counsel, Federal

Housing Administration,

Washington, D. C.

DEAR MR. FERGUSON: With further reference to the above-captioned case, I am enclosing herewith letter from Harry C. Blanton, United States District Attorney, with copy of injunction granted on the 20th of this month in Federal Court No. 3 of the Eastern District of Missouri.

Due to the fact that the title companies of St. Louis and St. Louis County have as a matter of record, judgment in the above case, it is causing us quite a little difficulty in disposing of properties owned by the Administration.

Yours very truly,

J. W. KUHLMAN,
District Director.

Enclosures.

3. LETTER DATED SEPTEMBER 21, 1939, FROM FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN, COUNSEL TO FIRST NATIONAL BANK, ST. LOUIS, MO., TO AUDITING DEPARTMENT OF THAT BANK

FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN

506 Olive St.,

St. Louis, Missouri

SEPT. 21, 1939.

Re *Winkle Terra Cotta, Inc. vs. Federal Housing Administration, First National Bank, Garnishee.*

AUDITING DEPARTMENT,

First National Bank, St. Louis, Mo.

GENTLEMEN: Your letter of September 20th received, in which you enclosed a copy of a letter from Gus O. Nations, attorney representing the plaintiff in the above proceedings, and also a copy of the petition for stay of proceedings and extension of time for the filing of interrogatories.

We have been in communication with Mr. Vandivort, Assistant United States District Attorney, and informed him that you had received the petition from Mr. Nations, and stated that we would like to cooperate with his office in this matter, but for the protection of the Bank we considered it advisable to withhold sufficient funds to satisfy the plaintiff's claim, in the event the Circuit Court of Appeals should ultimately decide that the judgment which plaintiff has obtained against the Federal Housing Administration is valid, and that if such a decision is made, of course, the Bank would be liable in the garnishment proceeding.

Mr. Vandivort stated that he would discuss the matter with Mr. Blanton, United States District Attorney, and see whether this would be agreeable.

We have now heard from Mr. Vandivort, in which he states that he appreciates that the Bank wishes to

protect itself in the proceeding, and although he has no specific authority, he believes that it would be satisfactory to withhold from the funds of the Federal Housing Administration an amount to equal the judgment which plaintiff has obtained, which he states is approximately \$3,000.00.

However, the judgment is drawing interest and as the case will not be decided for several months, we feel that in order to safeguard the Bank, you should at least withhold \$3,250.00, which should be a sufficient amount to pay the judgment, interest, and costs. Therefore, pending the final hearing of the case in the Circuit Court of Appeals, we recommend that you withhold from the funds of the Federal Housing Administration the sum of \$3,250.00, in order to protect the Bank in connection with this garnishment proceeding, and notify the Federal Housing Administration that such action is being taken.

Yours very truly,

FORDYCE, WHITE, MAYNE, WILLIAMS & HARTMAN,

By WALTER R. MAYNE.